

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\*\*\*\*\*  
Samuel Bourne, \*  
Plaintiff \*  
\*  
v. \* 12-cv-251-JL  
State of New Hampshire, Supreme \*  
Court of New Hampshire, Honorable Linda \*  
Dalianis, Honorable James Duggan, \*  
Honorable Gary Hicks, Honorable Carol Ann \*  
Conboy, Honorable Robert Lynn \*  
and Eileen Fox, Supreme Court Clerk \*  
Defendants \*  
\*  
\*\*\*\*\*

**MOTION TO DISMISS**

The Defendant(s), State of New Hampshire, Supreme Court of New Hampshire, Honorable Linda Dalianis, Honorable James Duggan, Honorable Gary Hicks, Honorable Carol Ann Conboy, Honorable Robert Lynn and Eileen Fox, Supreme Court Clerk, by and through counsel, the Office of the Attorney General, submit the following motion to dismiss. In support thereof, Defendants state as follows:

1. The complaint and documents attached to it demonstrate that at bottom, Plaintiff is asking the federal court to vacate and reverse various orders of the State Superior Court that were appealed unsuccessfully to the New Hampshire Supreme Court and to require the New Hampshire Supreme Court to hear or rehear matters that it has declined, and to vacate the New Hampshire Supreme Court's orders imposing costs. Bourne characterizes his complaint as arising under the Privileges and Immunities Clause, Art.; the First Amendment based on denial of access to the courts; and the 14<sup>th</sup> Amendment and Section 1983 and Section 1988. *See* Compl. ¶ 3 and Counts I, IV and

V. He further asserts counts for negligence and fraudulent representation. *See* Count II and III.

2. Plaintiff's claims should be dismissed because the Eleventh Amendment bars Plaintiff's claims against the State, the New Hampshire Supreme Court and the individual defendants in their official capacities.

3. Plaintiff's claims should be dismissed because absolute immunity protects judges and judicial staff from civil liability for judicial acts.

4. Plaintiff's claims should be dismissed because the *Rooker-Feldman* doctrine precludes a federal district court from reviewing a final judgment of a state court.

5. There are no facts alleged to support the bald legal conclusions that New Hampshire courts have trampled on Mr. Bourne's rights or that there is a history of discriminatory conduct. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S.Ct. at 1949. Therefore the conclusory allegations in this pleading are insufficient to support a plausible inference that any of Mr. Bourne's civil rights have been violated.

6. Plaintiff's state law claims should also be dismissed based on judicial immunity and failure to state a claim.

7. A memorandum of law is attached.

8. Concurrence is not required as this is a potentially dispositive motion.

WHEREFORE, for the reasons stated herein, Defendants respectfully request that the court order as follows:

A. That the Complaint be dismissed in its entirety against all Defendants;

B. For such other and further relief as is just and necessary.

Respectfully submitted,

STATE OF NEW HAMPSHIRE, N.H.  
SUPREME COURT, HONORABLE  
LINDA DALIANIS, HONORABLE  
JAMES DUGGAN, HONORABLE GARY  
HICKS, HONORABLE CAROL ANN  
CONBOY, HONORABLE ROBERT  
LYNN AND EILEEN FOX, SUPREME  
COURT CLERK

By their attorney,

MICHAEL A. DELANEY  
ATTORNEY GENERAL

Date: July 19, 2012

/s/ Nancy J. Smith

Nancy J. Smith, NH Bar No. 9085  
Senior Assistant Attorney General  
New Hampshire Attorney General's Office  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Telephone: (603) 271-3650  
Email: [nancy.smith@doj.nh.gov](mailto:nancy.smith@doj.nh.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following persons on this date and in the manner specified herein: Conventionally served by first class mail to Samuel Bourne, pro se, 117 Pond Street, East Bridgewater, MA 02333.

Date: July 19, 2012

/s/ Nancy J. Smith

Nancy J. Smith  
NH Bar # 9085